

Letter of Findings: 04-20120181P
Sales Tax
For Tax Years 2010 and 2011

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ISSUE

I. Tax Administration–Negligence Penalties.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer requests that the Department exercise its discretion to abate the ten-percent negligence penalties.

STATEMENT OF FACTS

Taxpayer filed its sales tax returns and/or made its tax payments one to four days late for a few tax periods. Taxpayer was assessed penalties and interest for the December 2008, November 2010, December 2010, February 2011, and December 2011 tax periods. Taxpayer requests abatement of the penalties for these periods. Taxpayer's protest was untimely for the December 2008 tax period and, therefore, cannot be protested. An administrative hearing was held to address the protest of the penalties for the other four tax periods. Further facts will be supplied as required.

I. Tax Administration–Negligence Penalties.

DISCUSSION

Taxpayer protests the imposition of the ten-percent negligence penalties for the November 2010, December 2010, February 2011, and December 2011 tax periods pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2](#)(c) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

Taxpayer has provided sufficient information to establish that its failure to pay the deficiency in this instance was not due to Taxpayer's negligence, but was due to reasonable cause as required by [45 IAC 15-11-2](#)(c). While Taxpayer's current circumstances show that Taxpayer acted with reasonable cause, Taxpayer should be on notice that should these circumstances arise again, penalty waiver may not be warranted.

FINDING

Taxpayer's protest of the imposition of the penalties for the November 2010, December 2010, February 2011, and December 2011 tax periods is sustained.

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